

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JANET TAYLOR and JAMES NEWLANDS,
individually and on behalf of all
others similarly situated,

Plaintiffs

Case No. 1:21-cv-00839

v.

WALTER KIDDE PORTABLE EQUIPMENT,
INC.,

Defendant.

**DEFENDANT WALTER KIDDE PORTABLE EQUIPMENT, INC.'S
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED CLASS-
ACTION COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Walter Kidde Portable Equipment Inc. ("Kidde"), through undersigned counsel, submits this motion to dismiss as to all causes of action asserted by plaintiffs in their Second Amended Complaint. (Doc. 33). In support of this Motion, Kidde shows the Court the following:

1. Plaintiffs filed their First Amended Class Action Complaint on February 4, 2022, asserting nineteen causes of action stemming from their alleged purchase of purportedly defective fire extinguishers manufactured by Kidde. (Doc. 20).

2. On September 23, 2022, in response to Kidde's motion to dismiss (see Doc. 21), the Court rejected 16 of the 19 causes of action in whole, and rejected an additional count in part. (Doc. 25).

3. Plaintiffs' Second Amended Complaint ("SAC") asserts 16 causes of action, including many of the exact same claims that earlier failed. (Doc. 33). Because the SAC fails to cure the deficiencies that required dismissal of many claims last time and also suffers from new additional deficiencies, the SAC should be dismissed in its entirety for the following reasons:

- a. Plaintiffs fail to allege recoverable remedies under state law in light of Kidde's recall program (Counts II-XVI).
- b. Plaintiffs' negligent-misrepresentation claim, most of their common-law fraud claims, and Newlands's fraudulent-misrepresentation and Florida Deceptive and Unfair Trade Practices Act claims are barred by the economic-loss doctrine (Counts V, VII-X, XII-XIV).
- c. Newlands's implied-warranty claim—and thereby his Magnuson-Moss Warranty Act ("MMWA") claim—fails for lack of privity and lack of manifestation of any defect (Counts VI, XVI).
- d. Plaintiffs' MMWA claims fail for lack of notice (Count XVI).
- e. Plaintiffs' equitable Unfair Competition Law, False Advertising Law, and unjust-enrichment claims fail

because plaintiffs do not allege a lack of adequate legal remedy or a direct benefit to Kidde (Counts II, IV, XV).

f. Plaintiffs do not allege valid money had and received claims (Count XI).

g. And finally, plaintiffs do not allege the imminent future harm required for injunctive relief (Count I).

4. Pursuant to Local Rule 7.3(a), Kidde submits a supporting memorandum of law contemporaneously herewith.

5. A chart summarizing the basis for dismissal of each of plaintiffs' claims, and page references to Kidde's respective arguments, is attached hereto as Exhibit A.

6. For the foregoing reasons, as well as those set forth in the accompanying memorandum of law, Kidde respectfully requests that the Court dismiss plaintiffs' Second Amended Complaint in its entirety with prejudice.

Respectfully submitted this 19th day of December, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Christopher C. Lam
Christopher C. Lam